

209-21/JTN  
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*Chipotle Mexican Grill, Inc.*  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ALEXIS ROBAINA,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL OF COLORADO,  
LLC, CHIPOTLE MEXICAN GRILL OF  
COLORADO, LLC d/b/a CHIPOTLE MEXICAN  
GRILL, CHIPOTLE MEXICAN GRILL, INC. and  
CHIPOTLE MEXICAN GRILL, INC. d/b/a  
CHIPOTLE MEXICAN GRILL,

Defendants.  
Defendants.  
-----X

Case No.: 21-3784

**NOTICE OF REMOVAL**

Removed from:  
Supreme Court of the State of New York,  
County of Nassau  
Index No.: 603570/2021

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK:**

**PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and Local Civil Rule 81.1, Defendants Chipotle Mexican Grill of Colorado, LLC, incorrectly named additionally as “Chipotle Mexican Grill of Colorado, LLC d/b/a Chipotle Mexican Grill,” and Chipotle Mexican Grill, Inc., incorrectly named additionally as “Chipotle Mexican Grill, Inc. d/b/a Chipotle Mexican Grill” (hereinafter “Defendants” or “CMG”), hereby remove this action from the Supreme Court of the State of New York, County of Nassau, to the United States District Court for the Eastern District of New York, and respectfully aver as follows:

1. This Notice of Removal is made subject to the right of Defendants to appear specially and interpose any defense, including but not limited to any defenses made pursuant to Federal Rule of Civil Procedure 12(b).

2. This Honorable Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) and removal is proper pursuant to 28 U.S.C. § 1441.

3. This Honorable Court occupies the district and division in which this action was pending. *See* 28 U.S.C. §§ 112(c), 1446(a).

4. Defendant Chipotle Mexican Grill, Inc. has been served with process in a civil suit filed in the Supreme Court of the State of New York, County of Nassau, entitled “*Alexis Robaina v. Chipotle Mexican Grill, Inc. and Chipotle Mexican Grill, Inc. d/b/a Chipotle Mexican Grill*” and bearing Index No. 603570/2021 on the docket of that court. According to the Affidavit of Service filed by Plaintiff, service of process on said Defendant was completed on April 12, 2021.

5. True and correct copies of the Summons, Verified Complaint, Affidavit of Service, Stipulation extending Defendant Chipotle Mexican Grill, Inc.’s time to appear and respond to Plaintiff’s Verified Complaint, and Defendant Chipotle Mexican Grill, Inc.’s Answer are attached hereto as Exhibit “A.”

6. Defendant Chipotle Mexican Grill of Colorado, LLC has been served with process in an amended civil suit filed in the Supreme Court of the State of New York, County of Nassau, entitled “*Alexis Robaina v. Chipotle Mexican Grill of Colorado, LLC, Chipotle Mexican Grill of Colorado, LLC d/b/a Chipotle Mexican Grill, Chipotle Mexican Grill, Inc. and Chipotle Mexican Grill, Inc. d/b/a Chipotle Mexican Grill*” and bearing Index No. 603570/2021 on the docket of that court. According to the Affidavit of Service filed by Plaintiff, service of process was completed on said Defendant on June 14, 2021.

7. True and correct copies of the Supplemental Summons, Amended Verified Complaint, and Affidavit of Service are attached hereto as Exhibit “B.” Defendant Chipotle Mexican Grill of Colorado, LLC has not yet interposed an Answer or otherwise appeared in the state court action.

**REMOVAL ON THE BASIS OF DIVERSITY**  
**JURISDICTION IS PROPER AND TIMELY**

8. Upon information and belief, at all material times relevant hereto, Plaintiff Alexis Robaina was and is a natural person residing in the State of New York, County of Nassau. Although this was not alleged in the Summons, Verified Complaint, Supplemental Summons, or Amended Verified Complaint, the Nassau County Police Department ambulance report dated November 13, 2018, establishes that Plaintiff resides at 58 Haymaker Lane, Levittown, NY 11756, and is thus a resident of the State of New York.

9. At all material times relevant hereto, Defendant Chipotle Mexican Grill, Inc. was at the times complained of and is now a Delaware Corporation, with an office and its principal place of business located in Newport Beach, California.

10. At all material times relevant hereto, Defendant Chipotle Mexican Grill of Colorado, LLC was at the times complained of and is now a limited liability company duly organized and existing under and by virtue of the laws of the State of Colorado. Its sole member, Chipotle Mexican Grill, Inc., as noted above, is a Delaware Corporation, with an office and its principal place of business located in Newport Beach, California.

11. The parties therefore have complete diversity of citizenship insofar as Plaintiff is a citizen of New York and Defendants are citizens of Colorado, Delaware, and California.

12. In her Verified Complaint and Amended Verified Complaint, Plaintiff seeks damages for alleged personal injuries arising from an alleged slip or trip inside a CMG restaurant

located at 2312 Hempstead Turnpike in Nassau, New York on November 13, 2018. However, Plaintiff did not explicitly state the amount of damages alleged. (Exhibits “A” and “B.”)

13. On June 1, 2021, Defendant Chipotle Mexican Grill, Inc. served a Request for Supplemental Demand for Relief Pursuant to CPLR § 3017. A true and correct copy of same is attached hereto as Exhibit “C.” Defendant Chipotle Mexican Grill, Inc. demanded that Plaintiff set forth the total damages to which she deems herself entitled within fifteen (15) days. (Exhibit “C.”)

14. On or about June 9, 2021, Plaintiff served a response to the aforementioned Request for Supplemental Demand for Relief Pursuant to CPLR § 3017. A true and correct copy of same is attached hereto as Exhibit “D.” Plaintiff seeks damages in the sum of \$1,000,000, which certainly meets the \$75,000 amount in controversy requirement. (Exhibit “D.”)

15. While 28 U.S.C. § 1446 requires a defendant to file a notice of removal of a civil action or proceeding in the district court of the United States for the district and division within which such action is pending within 30 days after receipt of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, it is well established that “the removal clock does not start to run until the plaintiff serves the defendant with a paper that explicitly specifies the amount of monetary damages sought.” 28 U.S.C.S. § 1446; *Moltner v. Starbucks Coffee Co.*, 624 F.3d 34, 38 (2d Cir. 2010). As such, this Notice of Removal is timely because it is being filed within thirty (30) days of June 9, 2021, on or about when Plaintiff served Defendants with a paper explicitly specifying the amount of monetary damages Plaintiff seeks, at which point it became apparent to Defendants that removal of Plaintiff’s action is appropriate.

16. There are no other parties to this action other than those mentioned herein.

17. Pursuant to 28 U.S.C. § 1446, a copy of this Notice of Removal is being served on Plaintiff, through her counsel, and a Notice of Removal will be filed with the Clerk of the Court for the Supreme Court of the State of New York, County of Nassau.

15. Defendants reserve the right to amend or supplement this Notice of Removal and/or to urge additional arguments in support of its entitlement to remove.

**WHEREFORE**, Defendants pray that the action now pending against them in the Supreme Court of the State of New York, County of Nassau, described above, be removed to this Honorable Court and proceed herein; that the State Court proceed no further in this litigation; and that Defendants have such other, further, and different relief as this Court may deem just and proper.

Dated: New York, New York  
July 6, 2021

**FREEHILL HOGAN & MAHAR LLP**

*Attorneys for Defendants Chipotle Mexican Grill of Colorado, LLC  
and Chipotle Mexican Grill, Inc.*



By: \_\_\_\_\_

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STATE OF NEW YORK     )  
  : ss.:  
COUNTY OF NEW YORK )

I, Carol Chakwin, being duly sworn, deposes and says that I am not a party to the within action, am over 18 years of age and have an office and place of business in New York, New York.

On July 6, 2021, I served a true and correct copy of the within Defendants' **NOTICE OF REMOVAL** upon:

Lurie & Flatow, P.C.  
*Attorneys for Plaintiff*  
Attn: Jay Flatow, Esq.  
420 Lexington Avenue, Suite 2920  
New York, NY 10170-0002

at the address(es) designated by said attorneys for the purpose of depositing a true copy in a pre-paid properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

A handwritten signature in cursive script that reads "Carol Chakwin". The signature is written in dark ink and is positioned above a horizontal line.

Carol Chakwin